

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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1989 JUN 28 AM 10:19
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: W.Va. Code §46-9-407(8) See SB 41 of 1989 Session

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 13

TITLE OF RULE BEING FILED AS AN EMERGENCY: West Virginia
Farm Product Lien Central Filing System

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

See attached letter to Attorney General Brown.

Use Additional Sheets If Necessary.

Robert E. Dickinson



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Social Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA SECRETARY OF STATE

Charleston 25305

June 26, 1989

The Hon. Charles G. Brown
Attorney General
State Capitol
Charleston, WV 25305

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OFFICE OF THE SECRETARY OF STATE

Dear Charlie:

Pursuant to the provisions of West Virginia Code Sections 29A-3-15 and 15a, I am submitting to you the emergency rules which this office filed today in order to implement the farm liens filing system in West Virginia. The emergency has arisen because of the following circumstances. First, the Legislature passed a funding mechanism to implement a central farm liens filing system in West Virginia as is required by the Federal government in its Food Security Act of 1985, P.L. 99-198. See 7 U.S.C. 1631. This Federal law also requires that the state submit its proposal for maintaining a central filing system under the Food Security Act with the United States Department of Agriculture. The Department of Agriculture then certifies the proposal as being in conformity with the Federal law. Because of this requirement, our office had to wait for the certification letter to be issued by the U.S.D.A. before we could file the rules for public notice and comment. Unfortunately, the certification letter did not arrive until this morning and the program is suppose to take effect next Wednesday, July 5, 1989.

I have included a copy of the application which was submitted by this office to the U.S.D.A., the regulations which you are to review under the provisions of §29A-3-15, 15a, and a copy of SB 41 which clearly shows that we are operating within the statutory authority granted to us by the Legislature.

Thank you for your consideration in this matter. According to the code your office has 42 days from the filing of these emergency rules to approve or disapprove the emergency. If you have any questions, please feel free to contact me.

Sincerely,

Robert E. Wilkinson
Robert E. Wilkinson
Deputy Secretary of State

Enclosures

TITLE 153
 PROCEDURAL RULE
 SECRETARY OF STATE
 SERIES 13
 WEST VIRGINIA FARM PRODUCT LIEN CENTRAL FILING SYSTEM

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§153-13-1. General

1.1. Scope. These rules govern the West Virginia Farm Product Lien Central Filing System and access to the files maintained by the secretary of state pursuant to the farm product lien program.

1.2. Authority. -- W. Va. Code §46-307 & 407 and P.L. 99-198, Section 1324 of the Food Security Act of 1985.

1.3. Filing Date. --

1.4. Effective Date. --

§153-13-2. Definitions.

Terms defined in Section 1324 of the Food Security Act of 1985, P.L. 99-198, shall mean the same except as otherwise specified, as used in these regulations.

2.1. Actual delivery -- means the act of handing over the farm product list to the intended recipient or agent therefore.

2.2. Buyer in ordinary course of business -- means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

2.3. Central filing system -- means a system for filing effective financing statements or notice of such financing statement on a statewide basis which has been certified by the Secretary of the United States Department of Agriculture.

2.4. Effective financing statement -- means a statement that is an original; signed and filed with the secretary of state by the secured party; signed by the debtor; contains the name and address of the secured

party; the name and address of the person indebted to the secured party; the social security number or tax ID number of such debtor; and description of the farm products subject to the security interest to include county where collateral produced and amount of such product where applicable.

2.5. EFS -- means an effective financing statement.

2.6. Farm Bill -- means 1324 of the Food Security Act of 1985, P.L. 99-198.

2.7. Farm product -- means an agricultural commodity such as corn, tobacco or a species of livestock such as cattle, hogs, sheep, horses or poultry used or produced in farming operations, or a product of such crop of livestock in its unmanufactured state (such as wool-clip, maple syrup, milk and eggs); that is in the possession of a person engaged in farming operations.

2.8. Knows or knowledge -- means actual knowledge.

2.9. Master list -- means the accumulation of data in paper, electronic or other form, organized according to farm products; and arranged within such product alphabetically, numerically by tax ID, geographically by county and crop year.

2.10. Person -- means any individual, partnership, corporation, trust or any other business entity.

2.11. Portion -- means portion of the master list distributed to registrants regularly that cover the farm products in which such registrant has registered an interest.

2.12. Receipt -- means date of filing or date of actual delivery to the intended recipient, whichever occurs first.

2.13. Registrant -- means any buyer of farm products, selling agent or commission merchants registered with the system.

2.14. Secretary -- means the Secretary of State of the State of West Virginia.

2.15. Security interest -- means an interest in farm products that secures payment or performance of an obligation.

2.16. System -- means central filing system.

2.17. System operator -- means the secretary of state.

2.18. UCC or Uniform Commercial Code -- means the Uniform Commercial Code prepared under the joint sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, and in effect in most States of the United States at the time of enactment of P.L. 99-198

§153-13-3. Effective financing statement.

The UCC-1F is designated as the official form to be used as an effective financing statement. The UCC-1F contains all information required under state law for filing financing statements. Additionally the UCC-1F captures the information required for filing an effective financing statement in the central filing system. All farm products should be submitted for filing on the UCC-1F financing statement. Other documents containing information which complies with state law will be accepted for filing to perfect only and notice will not be provided to the central filing system for protection against buyers, commission merchants or selling agents.

§153-13-4. EFS information.

4.1. Debtor name and address (or other person subjecting the farm product to the security interest). In the case of a natural person, the surname (last name or family name) must appear first; in the case of a corporation or other entity not a natural person, the name must appear beginning with the first word not an article;

4.2. same person's social security number or, if other than natural person, IRS taxpayer identifica-

tion number;

4.3. secured party name and address;

4.4. crop year unless every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security interest;

4.5. farm product name and code list published by the secretary of state;

4.6. each county code number in the state where the farm product is produced or to be produced;

4.7. signature of debtor and secured party;

4.8. further details of the farm product subject of the security interest if needed to distinguish it from other such product owned by the same person but not subject to the particular security interest.

§153-13-5. Place of filing EFS.

5.1. The place of filing an EFS or notice of such financing statements is with the secretary of state.

5.2. Presentation for filing of an effective financing statement (UCC-1F) and tender of the filing fee and acceptance of the statement by the system operator constitutes filing. The system operator shall stamp each EFS with a file number and will "stamp in" the date and hour of filing and shall hold the statement or copy thereof for public inspection. In addition the system operation shall index the statements in a manner which will comply with the farm products master list requirements.

5.3. A UCC-3F or UCC-1F may be submitted for all farm products currently on file. The UCC-3F amendment or UCC-1F should provide all information (i.e. collateral codes, federal ID numbers, etc.) needed for preparation of the master farm product list for the central filing system. The secretary of state shall not be responsible for lists, or oral or written confirmation of financing statements covering farm products not filed pursuant to these regulations and thereby not appearing in the central filing system for farm products.

§153-13-6. Amendment or continuation of EFS.

6.1. The "material change," required by the Farm Bill to be reflected in an amendment (UCC-3F) to an EFS and master list entry, is whatever change that would render the master list entry no longer informative as to what is subject to the security interest in question. The purpose is to make information available, to a buyer, commission merchant or selling agent who proposes to enter into a transaction in a product, whether it is subject to a security interest or not. The requirement to amend arises when the information already made available no longer serves the purpose and other information is needed.

6.2. The amendment must be submitted in writing (UCC-3F) within three months of such material change signed by both the person who subjects the farm product to the security interest and the secured party and filed with the secretary of state. The effective date shall be the date the amendment is received, stamped and filed by SOS.

6.3. A continuation of an EFS is subject to the same requirement as an amendment. An effective financing statement remains effective for a period of five (5) years from the date of filing, subject to extensions for additional period of five (5) years each by refiling or filing a continuation statement within six (6) months before the expiration of the initial five (5) year period.

6.4. An EFS lapses on either the expiration or the filing of a notice signed by the secured party that the statement has lapsed or terminated, whichever occurs first.

6.5. An EFS may be terminated at any time during the effectived period by the secured party submitting a termination statement (UCC-3F).

§153-13-7. Effect of EFS outside state in which filed.

7.1. A question arises whether, if an EFS is filed in one state, a notice of it can be filed in another state and shown on the master list for the second state. There is nothing to prevent this, but it would serve no purpose. The provisions of the federal legislation will apply in the case of a product produced in the State of West Virginia, filed in the central filing system of West Virginia and reflected on its master list, even after such product is moved out of the State of West Virginia without being sold.

7.2. The Farm Bill provides only for filing an EFS, covering a given product, in the system for the state in which it is produced. Upon such filing in the system, buyers, commission merchants and selling agents not registered with the system are subject to the security interest in that product whether or not they know about it, even if they are outside that state. Persons registered with the system are subject if they receive written notice of an EFS even if they are outside that state. All of these provisions apply only where an EFS is filed in the system for the state in which the product is produced. They do not apply to a filing in another system.

7.3. The secretary of state shall maintain accurate records so that such dates can be readily determined. When requested, the secretary of state shall certify the date of receipt of a notice as shown on such records. Such certified date may be admissible as evidence or judicially noticed as the date of receipt in accordance with the rules of evidence and procedure.

§153-13-8. Obligations subject to central filing.

8.1. The Farm Bill does not provide for the transaction in which one person subjects a product to a security interest for another's debt. However the terms "person indebted" and "debtor" in the Farm Bill refer to the person who owns a product and subjects it to a security interest, whether or not that person owes a debt to the secured party. The basis for this is the purpose for which the information is supplied. Any buyer of a farm product, commission merchant or selling agent querying the master list or system operator about a prospective seller of a farm product is interested in whether that seller has subjected that product to a security interest, not in whether the debt is owed by that seller or by another.

8.2. A debt need not exist at the time of filing of an EFS.

8.3. Security interests existing prior to establishment of the system can be filed in the system and reflected in the master list if documents are in existence or are created which meet the requirements of sections 2.2 of these regulations and such documents are filed with the system operator. The effective date of such filing shall be the date it was filed by SOS.

§153-13-9. Registration.

9.1. Buyers, commission merchants and selling

agents may register with the secretary of state, for an annual period by submitting a registration form accompanied with the registration fee for each farm product for which an interest is registered. The registration form shall be provided by the secretary of state and indicated:

9.1.1. the name and address of the buyer, commission merchant or selling agent. Any address change shall be reported immediately to the system operator;

9.1.2. farm product or products in which registrant is interested;

9.1.3. if registrant is interested only in such product or products in certain county or certain counties, in the State of West Virginia.

9.2. A registrant, if not registered for any specified county or counties, shall be deemed to have registered for all counties shown on the master list.

9.3. A registrant will receive information in written form.

9.4. Frequency in which registrant wishes to receive list distributions must be indicated, but not more than monthly.

9.5. The Farm Bill does not require persons to register. Not registering with the system operator has the effect of making such persons, whether they are inside or outside the state covered by that system, subject to security interests shown on that system's master list whether or not such persons know about them, so that such persons for their own protection will need to query the system operator about any seller engaged in farming operations, of a farm product produced in the state covered by that system, with whom they deal.

9.6. The secretary of state shall furnish, within twenty-four (24) hours after request, oral confirmation of any effective financing statement in the system to any buyer of farm products buying from a debtor or commission merchant or selling agent selling for a seller covered by such statement, followed automatically by written confirmation, mailed by the end of the next business day following oral confirmation.

9.7. New registrants shall be mailed, within two (2) days of the acceptance of a registration form, the

portions of the master list requested in their registration form.

§153-13-10. Master list.

10.1. The secretary of state shall compile all EFS into a master list.

10.1.1. organized according to farm products;

10.1.2. arranged within each such product

a. in alphabetical order

b. according to the last name of the individual debtors or in the case of debtors doing business other than as individuals, the first word in the name of such debtors not an article;

c. in numerical order according to the social security number of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number of such debtors;

d. geographically by county and county where crop is produced.

e. and by crop year.

10.2. The list will contain:

10.2.1. the name and address of the secured party;

10.2.2. the name and address of the person subjecting the product to a security interest;

10.2.3. the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor; and

10.2.4. a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, and a reasonable description of the property, including county in which the property is produced.

§153-13-11. Portions of the master list.

11.1. The portion of the master list distributed regularly to registrants will be organized in such a

manner that information regarding the debtor and collateral in question can be readily obtained.

11.1.1. The portions of the master list will contain a heading for each farm product for which the registrant has registered and contain for each such product a sub-heading for each debtor with effective financing statements on file with the system.

11.1.2. Each farm product list will contain the name, address and social security number, or, if other than a natural person, IRS taxpayer identification number of each debtor (or other person subjecting such a product to a security interest).

11.1.3. For each such person, the list will contain further details of the farm product subject to the security interest if supplied on the EFS.

11.1.4. One of the sections will have these names in alphabetical order by the word appearing first in the name. The other section will have them in numerical order by social security number, or, if other than a natural person, IRS taxpayer identification number.

11.1.5. For each such person such section will show the secured party name and address.

11.1.6. The list portions will be distributed in written or printed form.

11.1.7. The basic unit of geographic lists will be based on the fifty-five (55) counties.

§153-13-12. Farm product list and codes.

12.1. The farm products, according to which the master list must be organized as required by the farm bill and which must be identified on an EFS are as found in Table 153-13-12A found at the end of this regulation.

12.2. The farm products, according to which the master list must be organized and which must be identified on an EFS, shall be specific commodities, species of livestock and specific products of crops or livestock.

§153-13-13. Crop year.

13.1. The crop year, according to which the master list must be arranged "within each farm product" is:

13.1.1. for a crop grown in soil, the calendar year in which it is harvested or to be harvested;

nj13.1.2. for animals, the calendar year in which they are born or acquired;

13.1.3. for poultry or eggs, the calendar year in which they are sold or to be sold.

13.2. An EFS or notice thereof which does not show crop year must be regarded as applicable to the crop or product in question for every year for which the EFS is effective.

§153-13-14. Amount and reasonable description.

14.1. The amount of farm products and reasonable description of the property, including county, on an EFS and on the master list, will be shown on every EFS and master list entry.

14.2. Every EFS and master list entry will identify a product. The amount of product must be indicated and only the portion covered by the EFS and owned by the debtor is effected by a security interest.

14.3. Any EFS and master list entry will identify each county in West Virginia where the product is produced. Reasonable identification of the location of the product will be shown.

14.4. The need to supply additional information arises only where some of that product owned by that person is subject to the security interest and some is not.

14.5. The additional information about amount and property must be sufficient to enable a reader of the information to identify what product owned by that person is subject, as distinguished from what of the same product owned by the same person is not subject.

14.6. The basis for this is to make information available as necessary to enable an identification of what product is subject to a security interest as distinguished from what is not.

§153-13-15. Distribution of portions of master list.

15.1. The effect of registration by buyers of farm products, commission merchants and selling agents is to get them on the list for regular distribution of

portions of that system's master list, the portions to be determined by the registration. Diligent effort shall be made to insure that all effective financing statements and notices of effective financing statements shall appear on a timely list. Due to the time lapse in list distribution, the registrant may make reasonable inquiry and oral request from the system operator concerning debtors not appearing thereon.

15.2. Registrants will be deemed to be registered only as to those portions of the master list for which they register, and will be deemed to have failed to register as to those portions for which they do not register.

15.3. The frequency of regular distribution of portions of the master list to registrants will be quarterly.

§153-13-16. Fees.

16.1. The secretary of state is authorized to set reasonable fees to defray the costs of the central filing system. The fees listed in Table 153-13-16B found at the end of this regulation are subject to annual reviews and changes.

16.2. Failure to pay fees as agreed shall result in suspension from receipt of further service until all delinquent amounts are paid in full. During a period of suspension, a registration shall be deemed to be unregistered for that period.

§153-13-17. Forms.

The following pages contain samples of the forms which should be used for the filing for all farm products. These forms have been designed to capture all information required in the system. This information will enable the system operator to provide timely and accurate listings of effective financing statements for farm product filings.

TABLE 153-13-12A

FARM PRODUCT LIST AND CODES

The farm products, according to which the master list must be organized as required by the farm bill and which must be identified on an EFS are as follows:

CROPS

101) Apples
 110) Beans (Snap)
 120) Berries (Black)
 130) Berries (Blue)
 140) Berries (Straw)
 150) Broccoli
 160) Brussels Sprouts
 170) Cabbage
 180) Carrots
 190) Cauliflower
 200) Cherries
 210) Corn
 220) Corn (Sweet)
 230) Cucumbers
 240) Grapes
 250) Hay
 260) Irish Potatoes
 270) Lettuce
 280) Maple Syrup
 290) Melons (Cantaloupes)

CROPS

300) Melons (Water)
 310) Mushrooms
 320) Oats
 330) Onions
 340) Peaches
 350) Pears
 360) Peppers
 370) Plums
 380) Popcorn
 390) Pumpkin
 400) Sorghum (Molasses)
 410) Soybeans
 420) Sweet Potatoes
 430) Tobacco
 440) Tomatoes
 450) Trees
 460) Turnips
 470) Walnuts
 480) Wheat

LIVESTOCK

490) Cattle (& calves)
 500) Chickens
 510) Ducks
 520) Eggs (Hatching)
 530) Goats
 540) Hogs
 550) Horses
 560) Lambs & Sheep
 570) Mules
 580) Turkeys

OTHER

590) Eggs
 600) Flowers
 610) Grass (Sod)
 620) Honey
 630) Milk
 640) Shrubbery
 650) Wool

TABLE 153-13-16B

FEES

The Secretary of State is authorized to set reasonable fees to defray the costs of the central system. The fees listed are subject to annual reviews and changes.

Confirmation.....	\$5.00 plus \$2.00 per listing
Effective Financing Statement.....	\$5.00 plus \$2.00 per each additional debtor
Master Farm Product List.....	\$170.00
Master List Portions/Per Quarter.....	\$50.00 each (crop, year, county, etc.)
Registration.....	\$500.00 per year per product (4 lists)

Information requests -- Consumer inquiry of the Central Farm Lien Database on a particular farmer, crop, crop year, etc. will be handled as a normal UCC inquiry by the Secretary of State. The charge will be three dollars (\$3.00) for a UCC-11, and five dollars (\$5.00) for a non-standard written, phone, or walk-in inquiry, plus fifty cents (\$.50) per page.

Failure to pay fees as agreed shall result in suspension from receipt of further service until all delinquent amounts are paid in full. During a period of suspension a registrant shall be deemed to be unregistered for that period.



KEN HECHLER
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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

June 26, 1989

The Hon. Charles G. Brown
Attorney General
State Capitol
Charleston, WV 25305

Dear Charlie:

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I have included a copy of the application which was submitted by this office to the U.S.D.A., the regulations which you are to review under the provisions of §29A-3-15, 15a, and a copy of SB 41 which clearly shows that we are operating within the statutory authority granted to us by the Legislature.

Thank you for your consideration in this matter. According to the code your office has 42 days from the filing of these emergency rules to approve or disapprove the emergency. If you have any questions, please feel free to contact me.

Sincerely,

Robert E. Wilkinson
Robert E. Wilkinson
Deputy Secretary of State

Enclosures

STATE OF WEST VIRGINIA
APPLICATION TO THE UNITED STATES
DEPARTMENT OF AGRICULTURE
FOR CERTIFICATION
AS A CENTRAL FILING SYSTEM



SUBMITTED BY:

Ken Hechler
Secretary of State
State Capitol
Charleston, WV 25305
(304) 345-4000

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ENCLOSURES:

RULES

LEGISLATION

FORMS

(1) HOW THE SYSTEM WILL OPERATE:

West Virginia's centralized agricultural filing system was established by the 1987 West Virginia Legislature. The legislation designated the Secretary of State's office (SOS) as the proper place to file a lien securing agricultural collateral, amendments thereto, or continuations thereof. Previously those had been filed at the county level. SOS is directed to create a record of financing statements containing the name and address of the debtor, the name and address of the secured party or assignee of the secured party, identifying numbers, dates, and a brief description of the collateral.

West Virginia's SOS will serve as the operator of a computerized central filing system, receiving and recording effective financing statements (EFS), amendments and continuations. SOS will also register buyers of farm products, commission merchants or selling agents as defined by the Act.

Four times annually, SOS will print out a master list of all liens, organized in conformity with the Act, and mail portions thereof to registered buyers. Each mailing will be complete, listing all active EFS as amended or continued, so that buyers need not retain prior lists.

(2) INFORMATION REQUIRED TO BE SUPPLIED ON EFS:

The following information will be required on an EFS for inclusion on the master list:

- (a) Name, last name first, and address of debtor;
- (b) Name, last name first, and address of secured party or assignee;
- (c) Crop year unless every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security agreement;
- (d) Farm product name and code list as published by SOS;
- (e) Each county in West Virginia where the farm product is produced or is to be produced at the time the EFS is executed, and each other county in West Virginia and/or other state where the same product at the same time is foreseen to be located in the future;
- (f) Signatures of the debtor and secured party;
- (g) Social security number of debtor, or if other than a natural person, IRS taxpayer identification number; and
- (h) Further details of the farm product subject to the security interest if needed to distinguish it from other such product owned by the same person but not subject to the particular security interest.

(3) WHERE EFS IS FILED, AMENDED:

A financing statement securing agricultural collateral is appropriately filed, amended or continued with the SOS. The SOS is required to record the information contained in such statements on a centralized computer system within one working day of receipt.

The West Virginia form utilized to file a lien securing agricultural collateral will serve the dual purpose of perfecting a lien under the provisions of West Virginia law, and supplying information required for an EFS. If the form contains sufficient information to meet the filing requirements of the Uniform Commercial Code Division (UCC), but not of the Act, SOS will file the lien and notify the secured party of additional EFS data required to accomplish central notice filing.

(4) METHOD OF RECORDING DATE AND HOUR OF FILING EFS:

Documents are received in the UCC Division of the Secretary of State's office. A filing officer then reviews each document to determine if it meets filing requirements, and if the appropriate filing fee has been paid.

EFS, amendments, and continuations that meet filing requirements are then "stamped in" utilizing a machine that records the date and time of filing.

Data entry follows. The appropriate information, as described in section (2) of this application, is entered together with the date and time of filing of the document.

(5) HOW MASTER LIST COMPILED:

The master list will be compiled from the computerized record created from West Virginia's centralized agricultural filing system as modified to comply with the Act. All information is stored on the state's mainframe computer.

Portions of master list will then be duplicated according to the buyers' registration requests. SOS will mail that information to registered buyers within five days of the preparation of the master list.

An example of the report to be sent to buyers follows.

Oral information followed by written confirmation will be furnished by UCC Personnel.

When a call is received in the UCC Division, the person who answers the phone will check the computerized record for the information and relay it to the caller.

The UCC Division will maintain a computerized log of such calls by date, time, requester, and the debtor name searched. The log will be utilized to mail written confirmation within one working day of receipt of the telephoned request, and will serve as a permanent record of the SOS office.

(6) LIST OF REGISTRANTS:

SOS will contact all commodity dealers, all livestock buyers and public warehousemen currently registered with West Virginia's Department of Agriculture, by mail to explain the registration requirements included in Section 1324 of the Act. A registration form will also be enclosed. A buyer must include the name of his business, his personal name, address, telephone number, as well as a specific list of farm products he purchases, and the specific counties and crop years for which he wishes to receive portions of the master list. Buyers may indicate using the word "all" that they wish to receive portions of the master list covering farm products statewide and/or for all crop years.

The SOS office will enter the buyers' registration information on the computer as soon as it is received. A copy of the latest portions of the master list requested by a new registrant will be mailed within two days of the filing of his/her registration form.

(7) DISTRIBUTION OF THE MASTER LIST:

The master list or portions thereof will be distributed to registered buyers quarterly.

When all filings for the fifteenth of the reporting month have been entered on the computer, SOS will run the master list. Lists will be mailed to buyers within five days of the run date. When the fifteenth of the month is a weekend or holiday, the cutoff date will be the last working day prior to the fifteenth.

(8) FARM PRODUCTS ON MASTER LIST:

Any farm product used as collateral by a debtor, whether it appears in the farm products list contained in the USDA rules or not, can be entered on the computer system. As agricultural liens are filed, every specific farm products category indicated on the EFS will be entered on the computer. Therefore, the buyer may register for any portion of the master list that covers a specific farm product in which he has an interest and that portion will be mailed to him/her within 24 hours for each county, product, or crop year requested and that portion will be mailed to him/her within 24 hours for each county, product, or crop year requested.

Initially, SOS will offer registered buyers portions of the master list organized according to farm products:

<u>CROPS</u>		<u>CROPS</u>
101) Apples		300) Melons (Water)
110) Beans (Snap)		310) Mushrooms
120) Berries (Black)		320) Oats
130) Berries (Blue)		330) Onions
140) Berries (Straw)		340) Peaches
150) Broccoli		350) Pears
160) Brussels Sprouts		360) Peppers
170) Cabbage		370) Plums

CROPS

180) Carrots
 190) Cauliflower
 200) Cherries
 210) Corn
 220) Corn (Sweet)
 230) Cucumbers
 240) Grapes
 250) Hay
 260) Irish Potatoes
 270) Lettuce
 280) Maple Syrup
 290) Melons (Cantaloupes)

CROPS

380) Popcorn
 390) Pumpkin
 400) Sorghum (Molasses)
 410) Soybeans
 420) Sweet Potatoes
 430) Tobacco
 440) Tomatoes
 450) Trees
 460) Turnips
 470) Walnuts
 480) Wheat

LIVESTOCK

490) Cattle (& calves)
 500) Chickens
 510) Ducks
 520) Eggs (Hatching)
 530) Goats
 540) Hogs
 550) Horses
 560) Lambs & Sheep
 570) Mules
 580) Turkeys

OTHER

590) Eggs
 600) Flowers
 610) Grass (Sod)
 620) Honey
 630) Milk
 640) Shrubbery
 650) Wool

West Virginia will use generic groupings for "minor" categories in order to facilitate master list utility.

However, SOS will "break out" a specific farm product from the "other" portion of the master list for distribution to registered buyers in response to the request of five or more registered buyers. SOS will notify registered buyers of any additional farm product categories available on the master list.

(9) "CROP YEAR" INTERPRETATIONS:

The crop year, for a crop grown in soil, is the calendar year in which it is harvested or to be harvested. For animals,

CROPS

- 180) Carrots
- 190) Cauliflower
- 200) Cherries
- 210) Corn
- 220) Corn (Sweet)
- 230) Cucumbers
- 240) Grapes
- 250) Hay
- 260) Irish Potatoes
- 270) Lettuce
- 280) Maple Syrup
- 290) Melons (Cantaloupes)

CROPS

- 380) Popcorn
- 390) Pumpkin
- 400) Sorghum (Molasses)
- 410) Soybeans
- 420) Sweet Potatoes
- 430) Tobacco
- 440) Tomatoes
- 450) Trees
- 460) Turnips
- 470) Walnuts
- 480) Wheat

LIVESTOCK

- 490) Cattle (& calves)
- 500) Chickens
- 510) Ducks
- 520) Eggs (Hatching)
- 530) Goats
- 540) Hogs
- 550) Horses
- 560) Lambs & Sheep
- 570) Mules
- 580) Turkeys

OTHER

- 590) Eggs
- 600) Flowers
- 610) Grass (Sod)
- 620) Honey
- 630) Milk
- 640) Shrubbery
- 650) Wool

West Virginia will use generic groupings for "minor" categories in order to facilitate master list utility.

However, SOS will "break out" a specific farm product from the "other" portion of the master list for distribution to registered buyers in response to the request of five or more registered buyers. SOS will notify registered buyers of any additional farm product categories available on the master list.

(9) "CROP YEAR" INTERPRETATIONS:

The crop year, for a crop grown in soil, is the calendar year in which it is harvested or to be harvested. For animals,

the crop year is the calendar year in which they are born or acquired. For poultry or eggs, the crop year is the calendar year in which they are sold or to be sold.

West Virginia's computer program will permit entry of a specified crop year if it is listed on an EFS. An EFS which does not allow crop year will be regarded as applicable to the crop or product in question for every year the EFS is effective.

(10) FEES:

(A) The Secretary of State is authorized to set reasonable fees to defray the costs of the central system. The fees listed are subject to annual reviews and changes.

Confirmation report.....	\$5.00 plus \$2.00 per listing
Effective Financing Statement.....	\$5.00 plus \$2.00 per each additional debtor
Master Farm Product List	\$170.00
Master List Portions/Per Quarter.....	\$50.00 each (Crop, Year, County, Etc.)
Registration.....	\$500.00 per yr. per product (4 lists)

Information Requests -- Consumer inquiry of the Central Farm Lien Database on a particular farmer, crop, crop year, etc. will be handled as a normal UCC inquiry by the Secretary of State. The charge will be \$3.00 for a UCC-11, and \$5.00 for a non-standard written, phone, or walk-in inquiry, plus .50 per page.

(B) Failure to pay fees as agreed shall result in suspension from receipt of further service until all delinquent amounts are paid in full. During a period of suspension a registrant shall be deemed to be unregistered for that period.

CENTRAL FILING SYSTEM - EFFECTIVE FINANCING STATEMENT, FORM UCC 1F

**KEN HECHLER, Secretary of State
State of West Virginia, Rm W-131, Capitol Bldg.
Charleston, West Virginia 25305**

INSTRUCTIONS:

1. Please Type.
 2. If debtor is an entity other than a natural person who is subjecting the product(s) to the security interest filed with this form, enter name beginning with first word not an article or punctuation mark. If natural person list LAST name of debtor or person subjecting collateral to security interest first.
 3. Verify and enter Social Security Number for each debtor or person subjecting collateral to security interest. If other than natural person, list tax ID numbers.
 4. Check debtor type P if individual and C if commercial (commercial includes sole proprietorship).
 5. List complete address to include county code and nine digit zip code.
 6. Enter county code where product is produced and quantity amount of collateral.
 7. County and collateral codes must be included in Part B and are listed on back of form.
 8. If space provided for any item(s) on the form is inadequate the item(s) should be continued on Form UCC-EF.
 9. Submit completed form in triplicate with appropriate filing fee to Secretary of State UCC Division.
- Registrants will receive the protection of Federal law only as to products, counties and crop years for which they are registered.

1. DEBTOR(s)

Debtor (Last Name First)/Business Name			
Mailing Address			
City	State	*County Code	Zip
*Tax ID/S.S.#	*Type of Debtor: P / / / C		

Debtor (Last Name First)/ Business Name			
Mailing Address			
City	State	*County Code	Zip
*Tax ID/S.S.#	*Type of Debtor: P / / / C		

2. Secured Party

Secured (Last Name First)/Business Name			
Address			
City	State	*County Code	Zip
*Tax ID/S.S.#	*Type of Secured: P / / / C		

3. Assignee

Assignee (Last Name First)/Business Name			
Address			
City	State	*County Code	Zip
*Tax ID/S.S.#	*Type of Assignee: P / / / C		

4. This Financing Statement covers the following types (or items) of property:

5. If collateral is crops--Crops are growing or to be grown on--Describe real estate. Indicate record owner, if not Debtor

6. Financing Statement is filed with:

Signature(s) of Debtor(s) _____ Signature(s) of Secured Party(ies) _____

Debtor #1: Name	Tax ID/Social Security #	County Code / / /
Debtor #2: Name	Tax ID/Social Security #	County Code / / /

8. This Financing Statement covers the following types (or items) of property:

Collateral Type Name	Collateral Number Code	County/Produced Code	Collateral Quantity Amount	Crop Year

9. Brief description of collateral (if needed to distinguish from products not subject to security interest):

10. If collateral involves livestock, crops growing or to be grown, describe property (give name if owned by person other than Debtor):

Signature(s) of Debtor(s) _____ Signature(s) of Secured Party(ies) _____

CENTRAL FILING SYSTEM - STATEMENTS OF CONTINUATION, RELEASE, FORM UCC 3F

KEN HECHLER, Secretary of State
State of West Virginia, Rm W-131, Capitol Bldg.
Charleston, West Virginia 25305

INSTRUCTIONS:

- 1. Please Type.
2. If debtor is an entity other than a natural person who is subjecting the product(s) to the security interest filed with this form, enter name beginning with first word not an article or punctuation mark.
3. Please verify and enter Social Security Number for each debtor or person subjecting collateral to security interest.
4. Check debtor type P if individual and C if commercial (commercial includes sole proprietorship).
5. List complete address to include county code and nine digit zip code.
6. Fill in original financing statement number with place and date filed.
7. Provide name of collateral and enter code(s).
8. County and collateral codes must be included for farm products and are listed on the back of forms.
9. Form must contain appropriate signatures.
10. Ensure that requirements are met for UCC and Food Security Act.
11. Submit completed form in triplicate with appropriate filing fee to Secretary of State UCC Division.

Registrants will receive the protection of Federal law only as to products, counties, and crop years for which they are registered.

1. DEBTOR(s)

Debtor (Last Name First)/Business Name
Mailing Address
City State *County Code Zip
*Tax ID/S.S.# *Type of Debtor: P / / /C

Debtor (Last Name First)/ Business Name
Mailing Address
City State *County Code Zip
*Tax ID/S.S.# *Type of Debtor: P / / /C

2. Secured Party

Secured (Last Name First)/Business Name
Address
City State *County Code Zip
*Tax ID/S.S.# *Type of Secured: P / / /C

Secured Party
Secured (Last Name First)/Business Name
Address
City State *County Code Zip
*Tax ID/S.S.# *Type of Assignee: P / / /C

3. This statement refers to original Financing Statement Bearing:

File Number: Date Filed:

- 4. Continuation. The original Financing Statement between the foregoing Debtor and Secured Party, bearing file number shown above, is still effective.
5. Termination. Secured Party no longer claims a security interest under the Financing Statement bearing file number shown above.
6. Assignment. The Secured Party's rights under the Financing Statement bearing file number shown above have been assigned to the assignee whose name and address appears in Item 12.
7. Amendment. Financing Statement bearing file number shown above is amended as set forth below.
8. Release. Secured Party releases the collateral described below from the Financing Statement bearing file number shown above.

9. This statement covers the following type(s) of property:

Check One:

Table with 5 columns: Collateral Name, Collateral Code, County Code, Collateral Amount, Crop Year. Includes checkboxes for 'Add or Release Collateral' and 'Number of additional sheets'.

10. Brief description of collateral if needed to distinguish from collateral not subject to security interest:

11. If collateral involves real property, livestock, crops growing or to be grown, describe property (give name if owned by person other than Debtor):

Signature(s) of Debtor(s) Signature(s) of Secured Party(ies)

CENTRAL FILING REGISTRATION FORM
KEN HECHLER
Secretary of State
State of West Virginia
Room W-131, Capitol Building
Charleston, West Virginia 25305

REGISTRANT

NAME: _____ DATE: _____
MAILING _____
ADDRESS: _____ PHONE: () _____
CITY: _____ STATE: _____ ZIP: _____

REGISTRANT TYPE: _____ BUYER
_____ COMMISSION MERCHANT
_____ SELLING AGENT

WHAT IS YOUR INTEREST IN RECEIVING A LIST OF LIENS?

INSTRUCTIONS: Please indicate whether a Master Farm Product List of liens is needed or whether a specific portion thereof is needed and, if applicable, the desired restrictions.

1. Which type of list is requested? Circle only one:

MASTER LIST - All farm products for the entire state.

SPECIFIC LIST - Specify below what is desired* Please note there is a fee for each specific list requested.

2. Specify whether the list of liens provided should be listed by debtor name only, by tax identification number of the debtor only, or by both debtor name and tax identification number of the debtor in separate listings. Circle only one:

N - DEBTOR NAME

T - TAX IDENTIFICATION OF DEBTOR

N & T - BOTH DEBTOR NAME AND TAX IDENTIFICATION NUMBER

*3. Complete this section only if requesting a specific portion of the Master Farm Product list of liens.

- a. 1. Only one collateral type may be used.
2. Use collateral type code listed on the back.

_____ - Debtor County
(One only, use code on back)

- b. 1. One or more restrictions can be requested, if desired.
2. Use County Codes listed on the back.

_____ - Debtor County
(One only, use code on back)

_____ - Location of Collateral by County
(One only, use code on back)

_____ - Crop Year
(One only, use code on back)

_____ - Zip Code
(One only)

PLEASE NOTE:

This list will be issued quarterly after the 15th and mailed before the 20th of March, June, September, and December. Modifications made between reports must be obtained by calling the Office of the Secretary of State, UCC Division (304) 345-4000.

Registrants will receive the protection of Federal law only as to products, counties and crop years for which they are registered.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000

WILLIAM H. HARRINGTON
Chief of Staff

RICHARD O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

FARM PRODUCTS BUYER REGISTRATION NOTICE AND FORM

Effective July 5, 1989, all buyers of farm products in West Virginia will have to register with the new Farm Liens Section of the Uniform Commercial Code Division of this office in order to maintain that they have clear title to the products they buy. The Federal Food Security Act of 1985 gives buyers of farm products, commission merchants and selling agents the opportunity to register for a listing of security interest in farm products. Failure to register makes the buyer liable for payment of security interests on the products they buy. Under USDA rules, "Registrants will be deemed to be registered only as to those portions of the master list for which they register, and will be deemed to have failed to register as to these portions for which they do not register." In order to get clear title for any farm product bought in the State of West Virginia, you will need to register for the products you buy in every county and crop year from which you purchase farm products.

In order to register, you must complete the attached buyer registration form and send it to the Secretary of State's office. The following instructions are designed to help you fill out the form:

1. In registering your organization, please use the address at which you wish to receive the listings you request. In addition, please provide the name and phone number of an individual we may contact with any questions.
2. Farm products registration. You may register for any farm product for which you wish to receive portions of the master list by indicating the number of copies of each portion you want in the blank in front of the appropriate product. If you wish to receive listings for all crops and livestock, mark the quantity you want in the blank preceding "all." Registering for the "other" portion of the master list will give you listings for farm products other than those listed in the categories shown on the back of the form. You may register for specific farm products other than those categories shown on the form, specific counties and/or specific crop years by writing the name of the farm product in the blank provided and/or indicating the appropriate county codes and crop years in the blanks following the farm product(s) for which you're registering. The county codes are found on the back of the form. For crop year, the last two digits of the year (e.g. 89=1989) should be used. If you do not indicate specific counties or crop years, you will be considered registered for all counties and crop years for the farm product(s) you select.

3. Signature. For the registration to be accepted, the form must be signed and dated by an authorized representative of the organization.

You will receive those portions of the master list you request once every three months. We will mail these lists no later than the 20th of March, June, September, and December each year. If you fail to receive your quarterly list, please contact us. The registration fee for the entire master list in West Virginia is \$500 per year. This fee entitles you to a quarterly updated master list. The fee for the entire master farm product list for the most recent quarter is \$170. A portion of the master list, for a specified crop, county, year, etc., is \$50 per quarter.

Once you have returned this registration form, you will be deemed registered for those farm products you request until the registration is cancelled. You may, of course, amend your registration at any time by sending in a new registration form. Please attach a cover letter to the form outlining the amendments made for your registration. There is no charge for amending a registration. Please send your completed registration form to:

Farm Liens Filings
UCC Division
Secretary of State
State Capitol
Charleston, WV 25305

If you have any questions about this program, please call the UCC Division at 345-4000.

CENTRAL FILING SYSTEM - REQUEST FOR INFORMATION, FORM UCC-11

KEN HECHLER, Secretary of State
State of West Virginia, Rm W-131, Capitol Bldg.
Charleston, West Virginia 25305

- INSTRUCTIONS:
1. PLEASE TYPE.
2. List exact name of business and, if individual, list LAST name first.
3. Please verify and enter Social Security number for each debtor. Businesses list tax ID numbers.
4. Please check debtor type P if individual and C if commercial (commercial includes sole proprietorship).
5. Submit completed form in triplicate with appropriate filing fee to Secretary of State UCC Division.

1. DEBTOR

2. REQUESTING PARTY

Debtor (Last Name First)/Business Name
Mailing Address
City State *County Code Zip
*Tax ID/S.S.# *Type of Debtor: P / / C

Requesting Party (Last Name First)/ Business Name
Mailing Address
City State *County Code Zip
*Tax ID/S.S.# *Type of Debtor: P / / C

Copy Requesting. Filing Officer please furnish exact copies of all Financing Statements and Statements of Assignment listed below, which are on file with your office. Enclosed is the statutory fee. Upon receipt of these copies, the undersigned party agrees to pay to the Filing Officer the fee for each page of each Financing Statement or Statements of Assignment by the Filing Officer.

Signature of Requesting Party

Information Request. Filing Officer please furnish certificate showing whether there is on file as of ____, 19__, at __ M. any presently effective statement, or any Statements of Assignment of each party named therein. Enclosed is the statutory fee. The undersigned party agrees to pay to the Filing Officer, upon receipt of the above certificate, the fee for each Financing Statement and each Statement of Assignment report on the certificate.

Signature of Requesting Party

Table with 3 columns: File No., Date and Hour of Filing, Name and Address Secured Party

The undersigned Filing Officer hereby certifies that the attached copies are true and exact copies of all available Financing Statements of Assignment listed in the above request. Additional fee required \$ ____. Dated this __ day, of ____, 19__.

Signature of Filing Officer

The undersigned Filing Officer hereby certifies that the above listing is a record of all presently effective Financing Statements or Statements of Assignment that name the above Debtor and which are on file in my office as of ____, 19__ at __ M. Additional fee required \$ ____.

Signature of Filing Officer

TITLE 153
PROCEDURAL RULE
SECRETARY OF STATE
SERIES 13
WEST VIRGINIA PRODUCT LIEN CENTRAL FILING SYSTEM

§153-13-1. General

1.1. Scope. These rules govern the West Virginia Farm Product Lien Central Filing System and access to the files maintained by the secretary of state pursuant to the farm product lien program.

1.2. Authority. -- W. Va. Code §46-307 & 407 and P.L. 99-198, Section 1324 of the Food Security Act of 1985.

1.3. Filing Date. --

1.4. Effective Date. --

§153-13-2. Definitions.

Terms defined in Section 1324 of the Food Security Act of 1985, P.L. 99-198, shall mean the same except as otherwise specified, as used in these regulations.

2.1. Actual delivery -- means the act of handing over the farm product list to the intended recipient or agent therefore.

2.2. Buyer in ordinary course of business -- means a person who, in the ordinary course of business, buys farm products from a person engaged in farming operations who is in the business of selling farm products.

2.3. Central filing system -- means a system for filing effective financing statements or notice of such financing statement on a statewide basis which has been certified by the Secretary of the United States Department of Agriculture.

2.4. Effective financing statement -- means a statement that is an original; signed and filed with the secretary of state by the secured party; signed by the debtor; contains the name and address of the secured

party; the name and address of the person indebted to the secured party; the social security number or tax ID number of such debtor; and description of the farm products subject to the security interest to include county where collateral produced and amount of such product where applicable.

2.5. EFS -- means an effective financing statement.

2.6. Farm Bill -- means 1324 of the Food Security Act of 1985, P.L. 99-198.

2.7. Farm product -- means an agricultural commodity such as corn, tobacco or a species of livestock such as cattle, hogs, sheep, horses or poultry used or produced in farming operations, or a product of such crop of livestock in its unmanufactured state (such as wool-clip, maple syrup, milk and eggs); that is in the possession of a person engaged in farming operations.

2.8. Knows or knowledge -- means actual knowledge.

2.9. Master list -- means the accumulation of data in paper, electronic or other form, organized according to farm products; and arranged within such product alphabetically, numerically by tax ID, geographically by county and crop year.

2.10. Person -- means any individual, partnership, corporation, trust or any other business entity.

2.11. Portion -- means portion of the master list distributed to registrants regularly that cover the farm products in which such registrant has registered an interest.

2.12. Receipt -- means date of filing or date of actual delivery to the intended recipient, whichever occurs first.

2.13. Registrant -- means any buyer of farm products, selling agent or commission merchants registered with the system.

2.14. Secretary -- means the Secretary of State of the State of West Virginia.

2.15. Security interest -- means an interest in farm products that secures payment or performance of an obligation.

2.16. System -- means central filing system.

2.17. System operator -- means the secretary of state.

2.18. UCC or Uniform Commercial Code -- means the Uniform Commercial Code prepared under the joint sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, and in effect in most States of the United States at the time of enactment of P.L. 99-198.

§153-13-3. Effective financing statement.

The UCC-1F is designated as the official form to be used as an effective financing statement. The UCC-1F contains all information required under state law for filing financing statements. Additionally the UCC-1F captures the information required for filing an effective financing statement in the central filing system. All farm products should be submitted for filing on the UCC-1F financing statement. Other documents containing information which complies with state law will be accepted for filing to perfect only and notice will not be provided to the central filing system for protection against buyers, commission merchants or selling agents.

§153-13-4. EFS information.

4.1. Debtor name and address (or other person subjecting the farm product to the security interest). In the case of a natural person, the surname (last name or family name) must appear first; in the case of a corporation or other entity not a natural person, the name must appear beginning with the first word not an article;

4.2. same person's social security number or, if other than natural person, IRS taxpayer identifica-

tion number;

4.3. secured party name and address;

4.4. crop year unless every crop of the farm product in question, for the duration of the EFS, is to be subject to the particular security interest;

4.5. farm product name and code list published by the secretary of state;

4.6. each county code number in the state where the farm product is produced or to be produced;

4.7. signature of debtor and secured party;

4.8. further details of the farm product subject of the security interest if needed to distinguish it from other such product owned by the same person but not subject to the particular security interest.

§153-13-5. Place of filing EFS.

5.1. The place of filing an EFS or notice of such financing statements is with the secretary of state.

5.2. Presentation for filing of an effective financing statement (UCC-1F) and tender of the filing fee and acceptance of the statement by the system operator constitutes filing. The system operator shall stamp each EFS with a file number and will "stamp in" the date and hour of filing and shall hold the statement or copy thereof for public inspection. In addition the system operation shall index the statements in a manner which will comply with the farm products master list requirements.

5.3. A UCC-3F or UCC-1F may be submitted for all farm products currently on file. The UCC-3F amendment or UCC-1F should provide all information (i.e. collateral codes, federal ID numbers, etc.) needed for preparation of the master farm product list for the central filing system. The secretary of state shall not be responsible for lists, or oral or written confirmation of financing statements covering farm products not filed pursuant to these regulations and thereby not appearing in the central filing system for farm products.

§153-13-6. Amendment or continuation of EFS.

6.1. The "material change," required by the Farm Bill to be reflected in an amendment (UCC-3F) to an EFS and master list entry, is whatever change that would render the master list entry no longer informative as to what is subject to the security interest in question. The purpose is to make information available, to a buyer, commission merchant or selling agent who proposes to enter into a transaction in a product, whether it is subject to a security interest or not. The requirement to amend arises when the information already made available no longer serves the purpose and other information is needed.

6.2. The amendment must be submitted in writing (UCC-3F) within three months of such material change signed by both the person who subjects the farm product to the security interest and the secured party and filed with the secretary of state. The effective date shall be the date the amendment is received, stamped and filed by SOS.

6.3. A continuation of an EFS is subject to the same requirement as an amendment. An effective financing statement remains effective for a period of five (5) years from the date of filing, subject to extensions for additional period of five (5) years each by refiling or filing a continuation statement within six (6) months before the expiration of the initial five (5) year period.

6.4. An EFS lapses on either the expiration or the filing of a notice signed by the secured party that the statement has lapsed or terminated, whichever occurs first.

6.5. An EFS may be terminated at any time during the effectived period by the secured party submitting a termination statement (UCC-3F).

§153-13-7. Effect of EFS outside state in which filed.

7.1. A question arises whether, if an EFS is filed in one state, a notice of it can be filed in another state and shown on the master list for the second state. There is nothing to prevent this, but it would serve no purpose. The provisions of the federal legislation will apply in the case of a product produced in the State of West Virginia, filed in the central filing system of West Virginia and reflected on its master list, even after such product is moved out of the State of West Virginia without being sold.

7.2. The Farm Bill provides only for filing an EFS, covering a given product, in the system for the state in which it is produced. Upon such filing in the system, buyers, commission merchants and selling agents not registered with the system are subject to the security interest in that product whether or not they know about it, even if they are outside that state. Persons registered with the system are subject if they receive written notice of an EFS even if they are outside that state. All of these provisions apply only where an EFS is filed in the system for the state in which the product is produced. They do not apply to a filing in another system.

7.3. The secretary of state shall maintain accurate records so that such dates can be readily determined. When requested, the secretary of state shall certify the date of receipt of a notice as shown on such records. Such certified date may be admissible as evidence or judicially noticed as the date of receipt in accordance with the rules of evidence and procedure.

§153-13-8. Obligations subject to central filing.

8.1. The Farm Bill does not provide for the transaction in which one person subjects a product to a security interest for another's debt. However the terms "person indebted" and "debtor" in the Farm Bill refer to the person who owns a product and subjects it to a security interest, whether or not that person owes a debt to the secured party. The basis for this is the purpose for which the information is supplied. Any buyer of a farm product, commission merchant or selling agent querying the master list or system operator about a prospective seller of a farm product is interested in whether that seller has subjected that product to a security interest, not in whether the debt is owed by that seller or by another.

8.2. A debt need not exist at the time of filing of an EFS.

8.3. Security interests existing prior to establishment of the system can be filed in the system and reflected in the master list if documents are in existence or are created which meet the requirements of sections 2.2 of these regulations and such documents are filed with the system operator. The effective date of such filing shall be the date it was filed by SOS.

§153-13-9. Registration.

9.1. Buyers, commission merchants and selling

agents may register with the secretary of state, for an annual period by submitting a registration form accompanied with the registration fee for each farm product for which an interest is registered. The registration form shall be provided by the secretary of state and indicated:

9.1.1. the name and address of the buyer, commission merchant or selling agent. Any address change shall be reported immediately to the system operator;

9.1.2. farm product or products in which registrant is interested;

9.1.3. if registrant is interested only in such product or products in certain county or certain counties, in the State of West Virginia.

9.2. A registrant, if not registered for any specified county or counties, shall be deemed to have registered for all counties shown on the master list.

9.3. A registrant will receive information in written form.

9.4. Frequency in which registrant wishes to receive list distributions must be indicated, but not more than monthly.

9.5. The Farm Bill does not require persons to register. Not registering with the system operator has the effect of making such persons, whether they are inside or outside the state covered by that system, subject to security interests shown on that system's master list whether or not such persons know about them, so that such persons for their own protection will need to query the system operator about any seller engaged in farming operations, of a farm product produced in the state covered by that system, with whom they deal.

9.6. The secretary of state shall furnish, within twenty-four (24) hours after request, oral confirmation of any effective financing statement in the system to any buyer of farm products buying from a debtor or commission merchant or selling agent selling for a seller covered by such statement, followed automatically by written confirmation, mailed by the end of the next business day following oral confirmation.

9.7. New registrants shall be mailed, within two (2) days of the acceptance of a registration form, the

portions of the master list requested in their registration form.

§153-13-10. Master list.

10.1. The secretary of state shall compile all EFS into a master list.

10.1.1. organized according to farm products;

10.1.2. arranged within each such product

a. in alphabetical order

b. according to the last name of the individual debtors or in the case of debtors doing business other than as individuals, the first word in the name of such debtors not an article;

c. in numerical order according to the social security number of the individual debtors or, in the case of debtors doing business other than as individuals, the Internal Revenue Service taxpayer identification number of such debtors;

d. geographically by county and county where crop is produced.

e. and by crop year.

10.2. The list will contain:

10.2.1. the name and address of the secured party;

10.2.2 the name and address of the person subjecting the product to a security interest;

10.2.3. the social security number of the debtor or, in the case of a debtor doing business other than as an individual, the Internal Revenue Service taxpayer identification number of such debtor; and

10.2.4. a description of the farm products subject to the security interest created by the debtor, including the amount of such products where applicable, and a reasonable description of the property, including county in which the property is produced.

§153-13-11. Portions of the master list.

11.1. The portion of the master list distributed regularly to registrants will be organized in such a

manner that information regarding the debtor and collateral in question can be readily obtained.

11.1.1. The portions of the master list will contain a heading for each farm product for which the registrant has registered and contain for each such product a sub-heading for each debtor with effective financing statements on file with the system.

11.1.2. Each farm product list will contain the name, address and social security number, or, if other than a natural person, IRS taxpayer identification number of each debtor (or other person subjecting such a product to a security interest).

11.1.3. For each such person, the list will contain further details of the farm product subject to the security interest if supplied on the EFS.

11.1.4. One of the sections will have these names in alphabetical order by the word appearing first in the name. The other section will have them in numerical order by social security number, or, if other than a natural person, IRS taxpayer identification number.

11.1.5. For each such person such section will show the secured party name and address.

11.1.6. The list portions will be distributed in written or printed form.

11.1.7. The basic unit of geographic lists will be based on the fifty-five (55) counties.

§153-13-12. Farm product list and codes.

12.1. The farm products, according to which the master list must be organized as required by the farm bill and which must be identified on an EFS are as found in Table 153-13-12A found at the end of this regulation.

12.2. The farm products, according to which the master list must be organized and which must be identified on an EFS, shall be specific commodities, species of livestock and specific products of crops or livestock.

§153-13-13. Crop year.

13.1. The crop year, according to which the master list must be arranged "within each farm product" is:

13.1.1. for a crop grown in soil, the calendar year in which it is harvested or to be harvested;

13.1.2. for animals, the calendar year in which they are born or acquired;

13.1.3. for poultry or eggs, the calendar year in which they are sold or to be sold.

13.2. An EFS or notice thereof which does not show crop year must be regarded as applicable to the crop or product in question for every year for which the EFS is effective.

§153-13-14. Amount and reasonable description.

14.1. The amount of farm products and reasonable description of the property, including county, on an EFS and on the master list, will be shown on every EFS and master list entry.

14.2. Every EFS and master list entry will identify a product. The amount of product must be indicated and only the portion covered by the EFS and owned by the debtor is effected by a security interest.

14.3. Any EFS and master list entry will identify each county in West Virginia where the product is produced. Reasonable identification of the location of the product will be shown.

14.4. The need to supply additional information arises only where some of that product owned by that person is subject to the security interest and some is not.

14.5. The additional information about amount and property must be sufficient to enable a reader of the information to identify what product owned by that person is subject, as distinguished from what of the same product owned by the same person is not subject.

14.6. The basis for this is to make information available as necessary to enable an identification of what product is subject to a security interest as distinguished from what is not.

§153-13-15. Distribution of portions of master list.

15.1. The effect of registration by buyers of farm products, commission merchants and selling agents is to get them on the list for regular distribution of

portions of that system's master list, the portions to be determined by the registration. Diligent effort shall be made to insure that all effective financing statements and notices of effective financing statements shall appear on a timely list. Due to the time lapse in list distribution, the registrant may make reasonable inquiry and oral request from the system operator concerning debtors not appearing thereon.

15.2. Registrants will be deemed to be registered only as to those portions of the master list for which they register, and will be deemed to have failed to register as to those portions for which they do not register.

15.3. The frequency of regular distribution of portions of the master list to registrants will be quarterly.

§153-13-16. Fees.

16.1. The secretary of state is authorized to set reasonable fees to defray the costs of the central filing system. The fees listed in Table 153-13-16B found at the end of this regulation are subject to annual reviews and changes.

16.2. Failure to pay fees as agreed shall result in suspension from receipt of further service until all delinquent amounts are paid in full. During a period of suspension, a registration shall be deemed to be unregistered for that period.

§153-13-17. Forms.

The following pages contain samples of the forms which should be used for the filing for all farm products. These forms have been designed to capture all information required in the system. This information will enable the system operator to provide timely and accurate listings of effective financing statements for farm product filings.

TABLE 153-13-12A

FARM PRODUCT LIST AND CODES

The farm products, according to which the master list must be organized as required by the farm bill and which must be identified on an EFS are as follows:

<u>CROPS</u>		<u>CROPS</u>	
101)	Apples	300)	Melons (Water)
110)	Beans (Snap)	310)	Mushrooms
120)	Berries (Black)	320)	Oats
130)	Berries (Blue)	330)	Onions
140)	Berries (Straw)	340)	Peaches
150)	Broccoli	350)	Pears
160)	Brussels Sprouts	360)	Peppers
170)	Cabbage	370)	Plums
180)	Carrots	380)	Popcorn
190)	Cauliflower	390)	Pumpkin
200)	Cherries	400)	Sorghum (Molasses)
210)	Corn	410)	Soybeans
220)	Corn (Sweet)	420)	Sweet Potatoes
230)	Cucumbers	430)	Tobacco
240)	Grapes	440)	Tomatoes
250)	Hay	450)	Trees
260)	Irish Potatoes	460)	Turnips
270)	Lettuce	470)	Walnuts
280)	Maple Syrup	480)	Wheat
290)	Melons (Cantaloupes)		

<u>LIVESTOCK</u>		<u>OTHER</u>	
490)	Cattle (& calves)	590)	Eggs
500)	Chickens	600)	Flowers
510)	Ducks	610)	Grass (Sod)
520)	Eggs (Hatching)	620)	Honey
530)	Goats	630)	Milk
540)	Hogs	640)	Shrubbery
550)	Horses	650)	Wool
560)	Lambs & Sheep		
570)	Mules		
580)	Turkeys		

TABLE 153-13-16B

FEEES

The Secretary of State is authorized to set reasonable fees to defray the costs of the central system. The fees listed are subject to annual reviews and changes.

Confirmation.....	\$5.00 plus \$2.00 per listing
Effective Financing Statement.....	\$5.00 plus \$2.00 per each additional debtor
Master Farm Product List.....	\$170.00
Master List Portions/Per Quarter.....	\$50.00 each (crop, year, county, etc.)
Registration.....	\$500.00 per year per product (4 lists)

Information requests -- Consumer inquiry of the Central Farm Lien Database on a particular farmer, crop, crop year, etc. will be handled as a normal UCC inquiry by the Secretary of State. The charge will be three dollars (\$3.00) for a UCC-11, and five dollars (\$5.00) for a non-standard written, phone, or walk-in inquiry, plus fifty cents (\$.50) per page.

Failure to pay fees as agreed shall result in suspension from receipt of further service until all delinquent amounts are paid in full. During a period of suspension a registrant shall be deemed to be unregistered for that period.

RECEIVED
1989 APR 25 AM 10
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989

ENROLLED

Committee Substitute for
SENATE BILL NO. 41

(By Senator Tucker, Mr. President)

PASSED April 6, 1989

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 41

(SENATOR TUCKER, MR. PRESIDENT, *original sponsor*)

[Passed April 6, 1939; in effect ninety days from passage.]

AN ACT to amend and reenact sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating to uniform commercial code; secured transactions; redefining the place of filing to perfect security interests; raising filing fees; establishment of an account to maintain the uniform commercial code program; and creation of rule and fee setting authority of the secretary of state.

Be it enacted by the Legislature of West Virginia:

That sections four hundred one and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 46. UNIFORM COMMERCIAL CODE.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND
CHATTEL PAPERS.**

**§46-9-401. Place of filing; erroneous filing; removal of
collateral.**

1 (1) The proper place to file in order to perfect a
2 security interest is as follows:

3 (a) When the collateral is consumer goods, then in
4 the office of the secretary of state and in the office of
5 the clerk of the county commission of the debtor's
6 residence or if the debtor is not a resident of this state
7 then in the office of the clerk of the county commis-
8 sion where the goods are kept;

9 (b) When the collateral is timber to be cut or is
10 minerals or the like (including oil and gas) or accounts
11 subject to the provisions of subsection five, section one
12 hundred three of this article, or when the financing
13 statement is filed as a fixture filing subject to the
14 provisions of section three hundred thirteen of this
15 article, and the collateral is goods which are or are to
16 become fixtures, then in the office where a mortgage
17 on the real estate would be filed or recorded;

18 (c) In all other cases, in the office of the secretary of
19 state.

20 (2) A filing which is made in good faith in an
21 improper place or not in all of the places required by
22 this section is nevertheless effective with regard to
23 any collateral as to which the filing complied with the
24 requirements of this article and is also effective with
25 regard to collateral covered by the financing statement
26 against any person who has knowledge of the contents
27 of such financing statement.

28 (3) A filing which is made in the proper county
29 continues effective after a change to another county of
30 the debtor's residence or place of business or the
31 location of the collateral, whichever controlled the
32 original filing. A change in the use of the collateral
33 does not impair the effectiveness of the original filing.

34 (4) The rules stated in section one hundred three of
35 this article determine whether filing is necessary in
36 this state.

37 (5) Notwithstanding the preceding subsections, and
38 subject to the provisions of subsection three, section
39 three hundred two of this article, the proper place to
40 file in order to perfect a security interest in collateral,
41 including fixtures, of a transmitting utility is the office
42 of the secretary of state. This filing constitutes a
43 fixture filing as to the collateral described therein
44 which is or is to become fixtures.

45 (6) For the purposes of this section, the residence of
46 an organization is its place of business if it has one or
47 its chief executive office if it has more than one place
48 of business.

**§46-9-407. Information from filing officer; central indexing
system for recording security interest in
farm products; contents.**

1 (1) If the person filing any financing statement,
2 termination statement, statement of assignment, or
3 statement of release, furnishes the filing officer a copy
4 thereof, the filing officer shall upon request note upon
5 the copy the file number and date and hour of the
6 filing of the original and deliver or send the copy to
7 such person.

8 (2) Upon request of any person, the secretary of state
9 shall issue his certificate showing whether there is on
10 file in his office on the date and hour stated therein,
11 any presently effective financing statement naming a
12 particular debtor and any statement of assignment
13 thereof and if there is, giving the date and hour of
14 filing of each such statement and the names and
15 addresses of each secured party therein. The uniform
16 fee for such a certificate shall be three dollars if the
17 request for the certificate is in the standard form
18 prescribed by the secretary of state and otherwise
19 shall be five dollars plus fifty cents for each financing
20 statement and for each statement of assignment
21 reported therein. Upon request the filing officer shall
22 furnish a copy of any filed financing statement or

23 statement of assignment for a uniform fee of fifty
24 cents per page.

25 (3) The secretary of state shall develop and imple-
26 ment a central indexing system containing the infor-
27 mation filed with his office pursuant to subsection
28 four, section three hundred seven of this article.
29 Under this system, the secretary shall record the date
30 and time of filing and compile the information into a
31 master list organized according to farm products. The
32 list shall be organized within each farm product
33 category in alphabetical order according to the last
34 name of the borrower, or in the case of borrowers
35 doing business other than as individuals, the first word
36 in the name of such borrower in numerical order
37 according to the social security or taxpayer identifica-
38 tion number of the borrower, geographically by
39 county and by crop year. The master list shall also
40 contain the name and address of the secured party, the
41 name and address of the borrower, a description of the
42 farm products, including amount where applicable,
43 subject to the security interest, and a reasonable
44 description of the real estate, including the county
45 where or upon which the farm products are located.

46 (4) The secretary of state shall maintain a list of all
47 buyers of farm products, commission merchants and
48 selling agents who register with the secretary of state
49 indicating an interest in receiving the lists described in
50 subsection five of this section.

51 (5) The secretary of state shall distribute on a
52 regular basis as determined by the secretary of state to
53 each buyer, commission merchant and selling agent
54 registered under subsection four, a copy in written or
55 printed form of those portions of the master list which
56 the buyer, commission merchant or selling agent has
57 indicated an interest in receiving.

58 (6) Upon the request of any person, the secretary of
59 state shall provide within twenty-four hours an oral
60 confirmation of the filing of the form described in
61 subsection four, section three hundred seven of this
62 article, followed by a written confirmation.

63 (7) All fees and moneys collected by the secretary of
64 state pursuant to the provisions of this article shall be
65 deposited by the secretary of state in a separate fund
66 in the state treasury and shall be expended solely for
67 the purposes of this article, unless otherwise provided
68 by appropriation or other action of the Legislature.

69 (8) The secretary of state shall, pursuant to the
70 provisions of article three, chapter twenty-nine-a of
71 this code, promulgate rules and set fees, not otherwise
72 provided for by general law, to carry out the duties
73 associated with this article.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWS-
PAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1 Except as may be otherwise provided in article one,
2 chapter thirty-one of this code, the secretary of state
3 shall charge for services rendered in his office the
4 following fees to be paid by the person to whom the
5 service is rendered at the time it is done:

6 For each certificate of incorporation or copy
7 thereof, including restatements of any such
8 certificates issued on new agreements, and/
9 or consolidations or all certificates of merger
10 or consolidation or certificates authorizing a
11 foreign corporation to do business within this
12 state \$10.00

13 For each certified copy of certificate of incorpo-
14 ration, not to exceed ten pages 10.00

15 If such copy contains in excess of ten pages, for
16 each additional page20

17 For filing and recording a trademark 5.00

18 For each certificate of change of name, of
19 increase or decrease of authorized capital
20 stock, of change or principal office, or of
21 amendment to certificate of incorporation 5.00

22	For recording a power of attorney and certifi-	
23	cate thereof	3.00
24	For any other certificate, whether required by	
25	law or made at the request of any person	5.00
26	The foregoing fees shall include the tax on the	
27	great seal or the less seal impressed on any	
28	such document, as well as the filing, record-	
29	ing and indexing of the same.	
30	For endorsing and filing reports of corpora-	
31	tions, and all other papers, which shall	
32	include the indexing of the same, for each	
33	report or paper filed	1.00
34	For any search, not less than	1.00
35	For searches of more than one hour, for each	
36	hour or fraction thereof consumed in making	
37	such search	5.00
38	The cost of the search shall be in addition to	
39	the cost of any certificate issued pursuant	
40	thereto or based thereon. For entering state-	
41	ment of satisfaction of conditional sale con-	
42	tract	1.00
43	For filing each financing, continuation or ter-	
44	mination statement or other statement or	
45	writing permitted to be filed under chapter	
46	forty-six of the code	3.00
47	For recording any paper for which no specific	
48	fee is prescribed	1.00
49	Or at the rate, for each one hundred words	
50	recorded, of20
51	For issuing commission to a notary public, or to	
52	a commissioner of deeds, which shall include	
53	the tax on the state seal thereon and other	
54	charges	5.00
55	For a testimonial	1.50
56	For a copy of any paper, if one sheet	1.00
57	For each sheet of copy after the first75

58 For issuing a commission to a commissioner in
59 any other state 5.00
60 For any other work or service not herein
61 enumerated, such fee as may be elsewhere
62 prescribed.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

Frederic L. Parker
.....
Chairman Senate Committee

J. J. Settle
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Isaac C. Withers
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Sam R. Tucker
.....
President of the Senate

W. H. C. ...
.....
Speaker House of Delegates

The within is approved this the *24th*
day of *April* 19*29*.
Gaston Caperton
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 4/19/89

Time 10:40



United States
Department of
Agriculture

Packers
and
Stockyards
Administration

Washington,
DC
20250-2800

June 20, 1989

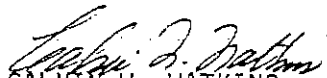
Mr. Robert E. Wilkinson
West Virginia Deputy
Secretary of State
Charleston, West Virginia 25305

Dear Mr. Wilkinson:

The Packers and Stockyards Administration has completed its review of the central filing system for the State of West Virginia and, on the basis of information submitted, has determined that the system meets the criteria for certification.

Enclosed is a copy of the notice of certification being sent to the Federal Register today.

Sincerely,


CALVIN W. WATKINS
Acting Administrator

Enclosure

[BILLING CODE 3410 KD]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration


CERTIFICATION OF CENTRAL FILING SYSTEM - WEST VIRGINIA

The Statewide central filing system of West Virginia is hereby certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by Robert E. Wilkinson, Deputy Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), P.L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 C.F.R. §§ 2.17(e)(3), 2.56(a)(3), 51 F.R. 22795.

Dated: June 20 , 1989.



CALVIN W. WATKINS, Acting Administrator
Packers and Stockyards Administration



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

FILED
1989 AUG -9 PM 4:16
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8808

August 9, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE ATTORNEY GENERAL

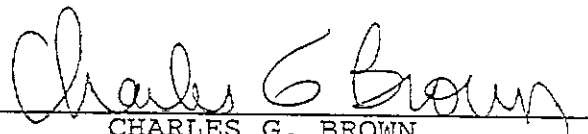
AGENCY: Secretary of State

RULE: New Rule, Series 13;
West Virginia Farm Product Lien Central Filing System

DATE FILED AS AN EMERGENCY RULE: June 28, 1989

DECISION NO. 10-89

Following review under W.Va. Code 29A-3-15b, it is the decision of the Attorney General that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office or the Secretary of State's office.


CHARLES G. BROWN
ATTORNEY GENERAL



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLES G. BROWN
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE
(800) 368-8808

EMERGENCY RULE DECISION

(ERD 10-89)

AGENCY: Secretary of State
RULE: New Rule, Series 13;
West Virginia Farm Product Lien Central Filing System
DATE FILED AS AN EMERGENCY RULE: June 28, 1989

The Secretary of State has filed a new Series 13 as an emergency.

West Virginia Code 29A-3-15b requires the Attorney General to review all emergency rules filed by the Secretary of State after May 13, 1987. This review requires the Attorney General to determine: (1) if the Secretary of State has exceeded the scope of its statutory authority in promulgating the emergency rule; (2) whether an emergency exists justifying the promulgation of the rule; and (3) if the rule was promulgated in compliance with the provisions of W.Va. Code 29A-3-15.

Following said review, the Attorney General shall issue a decision as to whether or not such emergency rule should be disapproved [29A-3-15b(a)].

Statutory Authority

W.Va. Code 46-9-407 requires that the Secretary of State develop and implement a central indexing system for recording security interests in farm products. Subsection 46-9-407(8), effective July 5, 1989, provides:

(8) The secretary of state shall, pursuant to the provisions of article three, chapter twenty-nine-a of this code, promulgate rules and set fees, not otherwise provided for by general law, to carry out the duties associated with this article.

It is the determination of the Attorney General that the Secretary of State has not exceeded the scope of its statutory authority in promulgating this emergency rule.

Emergency

W.Va. Code 29A-3-15(g) provides:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

The facts and circumstances constituting the emergency, as presented by the Secretary of State, are as follows:

First, the Legislature passed a funding mechanism to implement a central farm liens filing system in West Virginia as is required by the Federal government in its Food Security Act of 1985, P.L. 99-198. See 7 U.S.C. 1631. This Federal law also requires that the State submit its proposal for maintaining a central filing system under the Food Security act with the United States Department of Agriculture. The Department of Agriculture then certifies the proposal as being in conformity with the Federal law. Because of this requirement, our office had to wait for the certification letter to be issued by the U.S.D.A. before we could file the rules for public notice and comment. Unfortunately, the certification letter did not arrive until this morning [June 26, 1989] and the program is suppose to take effect next Wednesday, July 5, 1989.

It is the determination of the Attorney General that these circumstances demonstrate the existence of an emergency justifying the promulgation of the rule.

Procedural Compliance

W.Va. Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the facts and circumstances constituting the emergency, in the State Register and forthwith with the Legislative Rule-Making Review Committee.

The Secretary of State filed this emergency rule with supporting documents with the Attorney General on June 26, 1989, in the State Register on June 28, 1989 and with the Legislative Rule-Making Review Committee on June 29, 1989. The required filings were accomplished within the forty-two day review period prescribed by W.Va. Code 29A-3-15b.

It is the determination of the Attorney General that the Secretary of State has complied with the procedural requirements of W.Va. Code 29A-3-15 for adoption of an emergency rule.

This decision shall be cited as Emergency Rule Decision 10-89 or ERD 10-89 and may be cited as precedent. This decision is available from the Attorney General's office or the Secretary of State's office, and has been filed in the State Register and with the Legislative Rule-Making Review Committee.

Charles G. Brown

CHARLES G. BROWN
ATTORNEY GENERAL

Entered this 9th day of August, 1989.